Replacement of Royal Charter with *'The Institution of Engineers (India) Act':* A Legal Necessity

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Introduction

Professionals like architects, advocates, doctors, dentists, pharmacists, chartered accountants, cost & works accountants and company secretaries can practice and describe themselves as such professionals only on acquiring certain legally approved qualifications and requisite training by virtue of which they would be entitled to register before the respective professional councilsor institutes which are ***body corporates*** functioning under the provisions of the respective Acts passed by Parliament. Mere acquisition of a legally approved professional qualification will not entail one to practice or describe oneself as such professional. For instance, a person who holds a degree in law awarded by a university established by law, per se, cannot call himself an advocate and practice law on that premise alone. He has to enrol himself with the Bar Council of India and must agree to bind himself to the rules and regulations of the said council and only upon such enrolment he becomes entitled to describe himself as an advocate. The client, too, is protected to the extent that he has a remedy before the Bar Council against malpractice, if any, committed by the advocate.

Regulation of Professional Conduct

In the case of engineering profession, though the legal situation is analogous to professions mentioned above, the legal enactment is apparently a departure from the normal. **The Institution of Engineers (India),** hereinafter referred to as 'IEI', was constituted under a Royal Charter in 1935. Any one who wishes to describe himself as an engineer and practice accordingly, ought to register oneself with IEI subject to the provisions of its charter and bye-laws framed thereunder. To this extent, it is a statutory requirement.

The main object of IEI as contained in the Royal Charter is

> *'....to promote and advance the science, practice and business of Engineering in all its branches in India'*

and

> *'....to promote efficiency and just and honorable dealing and to suppress malpractice in Engineering'.*

In so far as regulation of professional conduct of engineers is concerned, it has been held by the High Court of Bombay in Writ Petition No.1235/ 1985 (as published at Page 26, Vol.80 of IEI Journal - AR, September 1999) as follows:

'.... We may further point out that inasmuch as Engineers are concerned, all the fears expressed are not justified for not only they are qualified persons but also action can be taken against them in the same manner as against Architects as there is the Institution of Engineers to look into the matter.....'

Granting of Certificates of Competency

One of the salient provisions of the Royal Charter worth noting is that IEI is constituted:

'to grant certificates of competency whether under any Act of the Government of India or Local Governments regulating the conduct and qualifications of Engineers or otherwise howsoever.'

In sharp contrast however, qualifications of registered valuers have been stipulated vide Section 34 AB of Wealth Tax Rules, 1957. This has an overriding effect on the above provision of the Charter. Hence the stipulation of qualifications of registered valuers in so far as it relates to engineers may not stand the test of law if challenged before a competent court of law. Interestingly, IEI did not assert itself in this regard ever since. It is pertinent to note that the Council of IEI is competent to grant certificates of competency regulating the conduct and qualifications of engineers under all Acts of the

Parliament or State Legislature including the Income Tax Act, 1961, and Wealth Tax Act, 1957. Gujarat State has passed the Gujarat Professional Civil Engineers Act, 2006, to make civil engineers professionally accountable. One wrong does not justify another and it is time that IEI did something about this.

Regulation of Engineering Education

Regulation of engineering education in the country is vested with IEI vide Clause 2(f) of the Royal Charter which reads as follows:

> *'To encourage, regulate and elevate the technical and general knowledge of persons engaged in or about to engage in Engineering or in any employment manual or otherwise in connection therewith and with a view thereto to provide for the holding of classes and to test by examination or otherwise the competence of such persons.....'*

The Council of IEI is, in fact, vested with statutory powers to regulate and maintain standards of engineering education in the country which includes laying down norms and standards for programmes and institutions, giving approval for setting up of engineering colleges and polytechnics, prescribing guidelines for admission of students and the charging of fees and inspecting and evaluating institutions periodically with a view to maintain standards and to provide recognitions or withhold

recognitions of programmes and institutions. The All India Council for Technical Education Act, 1987, in so far as it relates to regulation and control of engineering education overrides the above provision of the Royal Charter. Here again, IEI not only remained a silent spectator but acquiesced by agreeing to sit on the AICTE as one of its members!

Body Corporate

Under the British Rule, incorporation under Royal Charter was first and perhaps the last of such recognition extended to a professional body which had its origin and functions in India. The grant of Royal Charter constituted IEI as a ***body corporate*** endowing its corporate members the status of Chartered Engineers. In accordance with Halsbury's Laws of England, it is provided that the Crown has the right to create a Company or an Association by pronouncement of a Royal Charter and that the same has been done in the case of IEI. The IEI is, in the eyes of the law, a ***body corporate*** with ***common seal*** and ***perpetual succession***. The then Attorney General of India M. C. Setalvad, in a reference to his opinion on the status of Royal Charter sought by IEI in 1958 (as published in page 36 of 'A Brief History of IEI, 1995), has categorically stated that IEI continues to be in the eyes of law a ***"a valid body corporate"*** notwithstanding the constitutional changes in India on or after 1947.

Deemed to be an Act of Parliament

Pursuant to the passing of Indian Independence Act, 1947, more specifically in accordance with Section 18, it is specifically contained that any Act of Parliament, Order in Council, Rule, Regulation or any other instrument passed or made operates as the law of British of India in so far as the context permits and except as Parliament has otherwise provided for to the contrary. It is relevant to point out that in accordance with the India (Consequential Provision) Act, 1949, which came into effect on 16.12.1949 and published in the Gazette on 13.1.1950, it is the law that on and after the date of India's becoming a Republic the existing law is deemed to continue unless the same is in contravention of any law framed or has been repealed. The Royal Charter, granted in the year 1935, was a valid written instrument containing a grant by the Crown, made in the form of Letters Patent with the Great Seal having the effect and authority of an Act of Parliament and repeal of such a Charter is only possible by another Act of Parliament. This act of granting of Royal Charter had not been repealed by any other Act by the Indian Parliament. It may not be out of place to mention here that even judicial institutions like the High Courts of Kolkata, Mumbai and Chennai were established by Letters Patent and were popularly known as Chartered High Courts.

From the above it is clear that the Charter was, at the date of the commencement of the

Indian Constitution *"of law in force in territory of India".* In other words, the grant of Royal Charter to IEI at the Court at Buckingham Palace of His Majesty King Emperor George V (in conformity with the highest law of the land as it then stood) prior to independence is deemed to have the same effect if the same had been enacted by the Indian Parliament after independence.

Proposed Engineers' Bill Unnecessary

Not aware of the unique legal position of IEI, some set of persons and professional societies reeling under the impression that there is no institution available for the professional guidelines and control of engineers, are vigorously canvassing with the Ministry of Human Resource Development, Govt. of India, for the passing of an Engineers' Bill. This move is clearly *mala-fide*. A similar misconceived attempt was made way back in 1958 and an Engineer's Bill more or less of the same kind was withdrawn by the Govt. of India in 1959. The following extract from pages 11 and 12 of *'History of the Institution of Engineers (India)'* published in March 1996 illustrates the case in point:

> *'In March 1958 Mr. L. S. Chandrakant of the Ministry of Scientific Research and Cultural Affairs informed Mr. D. P. R. Cassad, President for 1957-58, that the Government of India had decided to convene a Conference of Engineering Societies in the country, 'to formulate*

definite proposals for the purpose of introducing a Bill in Parliament for the Statutory Incorporation of a Central Engineering Organization', and invited representatives of the Institution to participate in the Conference. Further in June 1958 the Ministry of Education renewed the invitation of the Institution to attend the proposed meeting. The other societies invited were: the Indian Institute of Chemical Engineers, the Institution of Telecommunication Engineers, the Aeronautical Society of India, the Mining, Geological and Metallurgical Institute of India, and the Institute of Metals.

Following the Conference held in June 1958, the Ministry of Education had prepared a Draft Bill for incorporation of a National Council of Engineers by an Act of Parliament and convened a further Conference of representatives of all the Engineering Societies in December 1959. Dr. K. L. Rao (President, 1958-60) emphasized that in the proposed Bill there was no new area to be covered as the Institution could perform the functions of the National Council of Engineers under the revised Bye-laws. The Council of the Institution at their 414th Meeting very carefully considered the Draft Bill sent by the Ministry of

Education, Government of India and resolved, inter alia, 'that the present status and independence of the Institution should be maintained to ensure the furtherance of the objects and promotion and advancement of the science and progress of engineering in all its branches.' The Secretariat of the Institution highlighted the text of Recommendation 58/14 adopted at the 4th Conference of the Engineering Institutions of the British Commonwealth held in Australia in 1958, which read 'The Conference recognizes that the community and engineering profession as a whole benefit from the closest possible co-operation between the various branches of engineering, and recommends that where there are one or more national institutions already providing for the whole profession, the formation of new specialist societies is not in the best interests of the community or, of the advancement of the science and practice of engineering.'

Although the other societies favoured the proposal to set up a National Council of Engineers, the role of the Institution of Engineers (India) was very welcome. Its Council decided that introduction of any such Bill was not necessary since the Institution could itself

fulfil the functions of the National Council of Engineers by amending Bye-laws and forming divisions of the various branches of engineering. In appreciation of this, the National Council of Engineers' Bill, 1959, was withdrawn by the Government of India.'

Royal Charter to be replaced with Indian law

The First Law Commission of India headed by none other than M. C. Setalvad in its fifth report on *'British Statutes Applicable to India'* dated May 11, 1957, vide para 11 has observed thus:

'... It is, therefore, in the fitness of things, that the entire legal code of India should be purely Indian and if the subject matter of any British Statutes be found to be still necessary for our purposes, that statute should be replaced by a corresponding Indian law, incorporating the necessary provisions of the British Statute'.

The Govt. of India would do well to replace the Royal Charter with the corresponding Indian law in the form of 'The Institution of Engineers (India) Act' incorporating necessary provisions of the Royal Charter in terms of the report of the First Law Commission referred to supra as a legal necessity. It would be in the best interest of IEI to desist from pursuing the passing of the proposed Engineers'

Bill in its present form which is unnecessary both on facts and in law. On the other hand, IEI would do well to pre-empt Govt. of India from piloting the proposed Bill in Parliament by petitioning the Ministry of Human Resource Development explaining the legal and factual position as aforesaid without loss of time.

It must be noted that the proposed Engineers' Bill, if passed by Parliament in its present form, will disband IEI, an autonomous statutory organization of the Govt. of India in existence since 1935. Thereafter, IEI will be left in the lurch since there cannot be two conflicting legal enactments on the same subject.

What should IEI do now?

IEI needs to wake up to its own inherent statutory powers under the Royal Charter - ***an instrumentality of the state*** - and start enforcing the same like the Architects' Council, Medical Council, Bar Council and the like under their respective statutes.

When the provisions of the Royal Charter could be conveniently invoked before the International Mobility Forum (IMF) to take up registration of ***Professional Engineers*** (PEs), there is no reason why the Council should hesitate from taking up registration of engineers for entrants to the profession which appears to be the very crux of the proposed Engineers' Bill. All those obtaining

a bachelor's degree in engineering from a university established by law including those passing IEI's Section A and B examinations should be enabled to enrol with IEI as ***Associates***. Only upon such enrolment, they would be entitled to a ***Certificate of Practice*** and describe themselves as ***'Registered Engineers'*** and use the title 'Er' irrespective of whether they are self-employed or in the service of the state or private enterprises. After five years of practice as registered engineers, they would be entitled to take up corporate membership of IEI at AMIE level which will then enable them to describe themselves as ***'Chartered Engineers'*** as per bye-laws in force.

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